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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-841

ROSE MARIE PORTER, WILLIAM H. LEHMAN, GEORGE C. KISKADDON, JOHN R. HODGE, AS TRUSTEE, JOSEPH AMYES, KAI ANGERMANN, DULCIE THORSTENSON, ALEX MOSHKIN, LILI JENSEN, PRISCILLA ALLSMAN, JULIA CASTAGNETTA, HOLGER PETERS, BARBARA LOMBARDI, DORIS BROWN, MARTHA J. SHUSTER, SHIRLEY RAPOPORT,

Petitioners,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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ROSE MARIE PORTER, WILLIAM H. LEHMAN, GEORGE C. KISKADDON, JOHN R. HODGE, AS TRUSTEE, JOSEPH AMYES, KAI ANGERMANN, DULCIE THORSTENSON, ALEX MOSHKIN, LILI JENSEN, PRISCILLA ALLSMAN, JULIA CASTAGNETTA, HOLGER PETERS, BARBARA LOMBARDI, DORIS BROWN, MARTHA J. SHUSTER, SHIRLEY RAPOPORT,

Petitioners,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The petitioners, Rose Marie Porter, et al., respectfully pray that a writ of certiorari issue to review the order of the United States Court of Claims entered in this proceeding May 15, 1974.

OPINION BELOW

The opinion of the Court of Claims in No. 111-73 and the Court of Claims order denying rehearing are set out in Appendix A hereto.

JURISDICTION

The judgment of the United States Court of Claims dismissing petitioners' claim was entered on May 15, 1974. A petition for rehearing was denied on October 10, 1974, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1255 (1).

QUESTIONS PRESENTED

1. Whether a claim for breach of a contract executed "on behalf of the Government of the Trust Territory of the Pacific Islands" by an Interior Department employee as the Secretary of the Interior's delegate is a "claim against the United States" giving the Court of Claims jurisdiction under 28 U.S.C. §1491.

2. Whether the Court of Claims has jurisdiction under 28 U.S.C. §1491 over the "taking" of a corporation without compensation by federal employees and officials under the control of the High Commissioner of the Trust Territory of the Pacific Islands.

STATUTORY PROVISION INVOLVED

The jurisdictional provision of the Tucker Act involved here, 28 U.S.C. §1491, is set out in Appendix B.

The Executive Order and Interior Department orders involved are set out in Appendix C, including: Executive Order 11021 (3 C.F.R. 600 1959-63 Comp.); Department of Interior Order No. 2902, 32 Fed. Reg. 16058 (1967), and Amendment 1 thereto; and Department of Interior Order No. 2918, 34 Fed. Reg. 157 (1968).

STATEMENT OF THE CASE

This case grew out of a contract to furnish water transportation to the United States Trust Territory of the Pacific Islands ("the Trust Territory"). The Trust Territory, which covers the area known as "Micronesia," includes over 2,000 islands distributed over 3 million square miles of the western Pacific Ocean. The Trust Territory is administered by the United States under an agreement with the United Nations called the "Trusteeship Agreement for the Former Japanese Mandated Islands." 61 Stat. 3301, T.I.A.S. No. 1665 (1947). Under this Trusteeship Agreement, the United States has "full powers of administration, legislation, and jurisdiction." 61 Stat. at 3302.

Plenary responsibility and authority for administration of the Trust Territory have been delegated by the President to the Secretary of the Interior ("the Secretary"), whose authority may be exercised through Interior Department officers or employees, or such other persons under the jurisdiction of the Secretary as he may designate. 81 Stat. 15, 48 U.S.C. §1681(a); Executive Order No. 11021 (3 C.F.R. 1959-63 Comp. at 600). App. C at 1c.

The executive authority over the Trust Territory and the responsibility of the United States under the U.N. Trust Agreement have been delegated to a "High Commissioner of the Trust Territory" (who is appointed by the President with the advice and consent of the Senate), to be exercised and discharged under the supervision and direction of the Secretary. 81 Stat. 15, 48 U.S.C. §1681 (a); Department of Interior Order No. 2918, Part II, Section 1. App. C at 5c. Authority specifically reserved to the Secretary or his delegate to grant franchises on behalf of the Trust Territory for the operation of surface vessels has been delegated to the "Director, Office

of Territories, or the High Commissioner . . . ." Department of Interior Order No. 2902, as amended. App. C at 4c.

The controversy presented to the Court of Claims arose out of a commercial water transportation franchise covering the Trust Territory, which was granted in 1968 to a California corporation, Marine Chartering Co., Inc. ("MCC"). In March 1968, the High Commissioner solicited proposals for such a contract and MCC submitted a proposal. After negotiations with Department of Interior officials in Washington, MCC's proposal was selected from among those submitted and further negotiations in Washington resulted in a contract ("the Agreement") executed by the Director, Interior Department Office of Territories, "on behalf of the Government of the Trust Territory of the Pacific Islands."

In accordance with the Agreement, a Micronesian corporation was organized by MCC to carry out its obligations under the Agreement. Called Micronesia Interocean Line, Inc. ("MILI") the corporation was capitalized by sale of stock to some 800 shareholders, most of them Micronesians, with the latter owning 50% of the shares as per the Agreement and MCC owning a controlling bloc of 210,000 shares. Under the Agreement, if MILI's profits were found to exceed seven and one half percent of gross revenue, the freight rates were to be reduced and/or the profits shared with the "Trust Territory Government." The reasonableness of rates was to be determined by an annual review board which was to set a remunerative level for rates which it found to be unremunerative. The Trust Territory Government was further obligated under the Agreement to furnish adequate harbor and terminal facilities which would provide security for cargo.

MILI's service under the Agreement, among the United States West Coast, Japan, and the various Trust Territory districts commenced September 1, 1968, under adverse conditions. It soon became apparent that the initial MILI rates were unremunerative, some of them being well below MILI's costs. However, the first two annual rate review boards, which were controlled by the High Commissioner and his subordinates, refused to recommend the needed rate increases and MILI's capital was soon depleted. One problem was the High Commissioner's failure to furnish adequate harbor and terminal facilities in accordance with the Agreement. As MILI began to collapse, the High Commissioner's subordinates forced their way into management and control of MILI. After the third rate review board met in early 1971, rate increases were finally granted in return for further control by the High Commissioner's subordinates, but suspension of MILI service by a dock strike prevented MILI from taking advantage of the rate increases. MILI was thus brought to its knees.

At this point, in September, 1971, the High Commissioner's subordinate, Attorney General Miyamoto, sought to call down a $500,000 letter of credit that MCC had placed in favor of MILI. MCC, however, had anticipated such a move and had allowed the letter to expire, but offered instead a bond in the same amount conditioned upon a competent finding of breach of the Agreement. The High Commissioner's subordinates declined this offer, demanding instead an agreement which gave them complete working control of MILI by placing MCC's 210,000 shares of stock in trust with Attorney General Miyamoto. The mismanagement of MILI under this agreement by the High Commissioner's subordinates and an unqualified "consultant" forced MILI (now renamed "Transpacific

Lines, Inc.") into receivership in February, 1974, despite the grant of further, substantial rate increases. The Attorney General and the High Commissioner's subordinates referred to above were federal civil service employees or federal officers.

Petitioners, owners of some 250,000 shares of MILI stock, filed a derivative action on behalf of MILI for $31,000,000 with the Court of Claims for breach of the Agreement provisions guaranteeing remunerative rates and adequate harbor and terminal facilities, as well as the implied obligation imposed upon the United States to cooperate in making performance of the Agreement possible. Petitioners alternatively sought redress on a second cause of action for the taking of their property rights in MILI without just compensation. This second cause of action was based upon the successful campaign waged by the High Commissioner's subordinates to take control of MILI, which control brought about the company's demise.

The Court of Claims granted defendant's motion for summary judgment, holding that it lacked jurisdiction over petitioners' claims because actions of "the Trust Territory Government" in making contracts and taking property were not the actions of the United States. The Court held thus although petitioners had pointed out the chain of executive authority and responsibility for the actions complained of, which runs from the U.S. Congress to the President and the Secretary of Interior, and thence to the High Commissioner acting as the Secretary's delegate under his supervision and control. The decision stands alone against various uncontradicted authorities to the contrary, and ignores petitioners' assertion by affidavit that agencies of the U.S. Government had exer-

cised actual control over the actions of the federal officials for which redress was sought.

Petitioners' request for rehearing was denied. Accordingly, petitioners seek review of the opinion and order below, holding that claims for breaches of contract and uncompensated taking of property by the High Commissioner of the Trust Territory, his subordinates and his agents, are not "claims against the United States" within the meaning of the jurisdictional provision of the Tucker Act. 62 Stat. 94, 28 U.S.C. §1491.

REASONS FOR GRANTING THE WRIT

I.

THE COURT OF CLAIMS DECISION CONFLICTS WITH HAWAII DISTRICT COURT AND NINTH CIRCUIT DECISIONS HOLDING THAT THE TRUST TERRITORY EXECUTIVE BRANCH, INCLUDING THE HIGH COMMISSIONER, IS AN AGENCY OF THE UNITED STATES.

The District Court for the District of Hawaii has held that the High Commissioner and his subordinates are "federal officials operating as a component of the Department of the Interior," pointing out that the "United States, acting through the Secretary of the Interior, controls the High Commissioner." The Court went so far as to say that the Trust Territory "is not a foreign country entitled to immunity from suits in the United States courts," while recognizing that the United States does not have technical "sovereignty" over the Trust Territory. *People of Saipan v. Department of Interior*, 356 F. Supp. 645, 656, 657, 658 (D. Hawaii, 1973). From this initial holding, although it found the National Environmental Policy Act to be applicable in the Trust Territory, the Court went on to hold that the Administrative

Procedure Act exclusion from judicial review of "the government of the territories or possessions of the United States" was applicable to actions of the High Commissioner and his subordinates. Accordingly, the Court dismissed the complaint, which sought review under NEPA of a lease by the High Commissioner of land on which the lessee intended to build a hotel in Saipan.

The Ninth Circuit specifically affirmed the Hawaii District Court holdings that the High Commissioner and his subordinates constitute a federal agency, but their actions are exempt from review under the APA because they constitute a government of the "general type" contemplated in the APA exclusion of governments of "territories or possessions." *People of Saipan v. Department of Interior*, 502 F.2d 90 (9th Cir. 1974), (Petition for Writ of Certiorari pending).

The Court of Claims opinion includes an erroneous reading of the *People of Saipan* District Court decision from which flowed a basic misunderstanding of the holding therein and a misplaced reliance on various tangential authorities, such as cases interpreting the "foreign country" exclusion under the Tort Claims Act. However, the underlying reason for the Court of Claims refusal to accept the ruling in *People of Saipan* seems to be an impression that in order to hold the United States responsible under the Tucker Act for contract breaches or other actions of the High Commissioner and his subordinates, a court must find not just that those officials are agents of the United States, but it must find further that the geographical area in which these acts are committed is under the technical sovereignty of the United States.

The District Court in *People of Saipan* cited with approval an earlier Hawaii District Court case, *People*

of Enewetak v. Laird, 353 F. Supp. 811 (D. Hawaii, 1973). The *People of Enewetak* case also conflicts with the Court of Claims opinion, since the Court held as follows in *People of Enewetak:*

> Though the peoples of the Trust Territory do not have the status of United States citizens and are resident outside the boundaries of the fifty states, they are subject to the authority of the United States .... The peoples of the Trust Territory do not have an independent government which can move to protect them from United States actions that are thought to be harmful to their environment. (353 F. Supp. at 818).

As the Court showed by an excerpt from the history of the Trust Agreement, the United States had intended from the time the Agreement was drafted "to treat the Trust Territory as if it were an integral part of the United States." (353 F. Supp. at 819).

II.

THE EXTENT OF JURISDICTION UNDER THE TUCKER ACT FOR ACTIONS OF OFFICIALS EXERCISING UNITED STATES AUTHORITY OUTSIDE THE AREA OF TECHNICAL UNITED STATES SOVEREIGNTY IS AN IMPORTANT QUESTION OF STATUTORY CONSTRUCTION.

The Court of Claims decision holds that persons whose executive authority and responsibility come directly and solely from the Congress and President of the United States and who act under the jurisdiction and control of cabinet departments can make and breach contracts with, or take property of, U.S. citizens or aliens so long as such actions are done outside the United States in the name of a governmental entity which is separate from the United States in name only. The Court of Claims opinion relied heavily on a line of cases dealing

with United States responsibility for acts done by U.S. officers under authority of a Joint Allied High Commissioner, whose authority derived from the various nations belonging to the Commission. Overlooking the crucial distinction between that situation and the instant one, the Court of Claims held that the United States can be absolved of responsibility for acts of federal employees carrying out the sole responsibilities of the United States, as delegates and under the control of the heads of United States Government departments, by the stroke of a pen designating the federal employees as a separate "government."

That the employees in question here are federal employees is beyond question, that having been the finding or assumption of various authorities, including the Civil Service Commission and an administrative law judge of the Department of the Interior itself. See *In the Matter of Roger L. St. Pierre*, Docket No. PA 74-8, United States Department of the Interior, Office of Hearings and Appeals, April 12, 1974. It was held there that an employee of the Trust Territory Government appointed by the Interior Department and under civil service is an Interior Department employee since the "Government of the Trust Territory was and is a complete creation and operation of the United States Department of the Interior."

That the United States treats the Trust Territory as its own for all practical purposes is beyond question, since it exercises total domination over the area including, *inter alia*, closing off and vacating portions of the Trust Territory, appointing judges, vetoing legislation, prohibiting communications with foreign governments and regulating intra-Trust Territory air service. The Trust Territory High Court itself has recognized that the Trust Territory is "merely a name under which the United

States carries out its obligations. . . . The Trust Territory, therefore, is not a real legal entity. It speaks, operates and acts as a part of the executive department of the United States. . . ." *Alig v. Trust Territory*, 3 T.T.R. 64, 67 (1965). Petitioners submit that a ruling allowing the United States to disavow the obligations of the "Trust Territory Government" merits this Court's attention.

III.

THE COURT OF CLAIMS HOLDING, WHICH RELEGATES PETITIONERS' CONTRACT CAUSE OF ACTION TO A DOUBTFUL REMEDY AND WHICH LEAVES PETITIONERS WITHOUT A FORUM FOR THEIR CLAIM OF UNLAWFUL TAKING, IS AN IMPORTANT ONE WHICH SHOULD BE SUBJECTED TO APPELLATE SCRUTINY.

The Court of Claims holding is a statement to the U.S. citizen shareholders of MILI and the hundreds of Micronesian native shareholders that they have no remedy in United States courts when the Interior Department's employees in Micronesia breach contracts or take property without compensation. The shareholders of MILI are relegated by the Court of Claims decision to the Micronesian courts for relief on their contract claim. Assuming no insoluble procedural problems are encountered, the forum is one where the judges are appointed by and serve at the pleasure of the Secretary of Interior, and whose budget is submitted for Interior Department approval by the High Commissioner.

Aside from the foregoing considerations, if procedural problems such as joinder of MILI block recovery in the Trust Territory upon the contract claim, petitioners will have no remedy for the unlawful taking. The Appellate Division of the Trust Territory High Court made this clear in its ruling on appeal from the trial court decision

in *Alig v. Trust Territory, supra.* See *Alig v. Trust Territory*, 3 T.T.R. 605 (1967). The Court of Claims decision may thus, in the end, mean that petitioners have no adequate remedy for the wrongs done them in the implementation of a contract involving Micronesia's major business. Such a decision needs appellate scrutiny.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion and order of the United States Court of Claims.

Respectfully submitted,

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APPENDIX A

In the United States Court of Claims

No. 111-73

(Decided May 15, 1974)

ROSE MARIE PORTER, ET AL. v. THE UNITED STATES

John P. Meade, attorney of record for plaintiffs.
Gerald L. Schrader, with whom was *Acting Assistant Attorney General Irving Jaffe*, for defendant.

Before COWEN, *Chief Judge*, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG, and BENNETT, *Judges*.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

KUNZIG, *Judge*, delivered the opinion of the court:

The court is confronted in this case with a jurisdictional question of first impression: is the United States subject to suit (1) for alleged breach of a contract negotiated by officials serving in the capacity of administrators for the United States Pacific Islands Trust Territory, or (2) for an alleged taking of property arising from actions by such officials pursuant to that contract? We conclude that the court lacks jurisdiction over either of these claims. Accordingly, we dismiss the petition.

Plaintiffs are sixteen named shareholders in Transpacific Lines, Inc. (Transpacific), a corporation chartered by the Government of the Trust Territory of the Pacific Islands

(Trust Territory).[1] Their suit for recovery of financial losses incurred by their enterprise derives from the following factual background.

On March 18, 1968, the Office of the Trust Territory High Commissioner issued a press release headlined "Trust Territory Invites Shipping Proposals." The release stated in part:

> The Government of the Trust Territory of the Pacific Islands is seeking proposals for a 10-year sea transportation contract. In addition to providing direct service from the U.S. west coast the contractor would be called upon to service the Trust Territory's six scattered districts * * *. The Territory is administered by the United States under a United Nations trusteeship agreement.

Subsequently, a "Solicitation for Proposals for Trust Territory of the Pacific Islands Sea Transportation Services" was issued. This directed interested parties to submit proposals to the High Commissioner of the Territory, together with a copy to the Director of the Office of Territories, United States Department of the Interior (Interior), by May 15, 1968. Timely proposals were received at these offices from Marine Chartering Company (Marine), a California corporation, and several other enterprises. In July 1968, Robert E. Vaughn, Deputy Assistant Secretary of the Interior, invited representatives of bidding parties to meet with a review panel at Interior to discuss the proposals. Following this meeting, attended by Marine's president, the panel concluded Marine had presented the best proposal.

Negotiations resulted in an agreement entered into on August 1, 1968. The agreement's preamble recited that it was "by and between the Government of the Trust Territory * * * and Marine Chartering Company, Inc." The signature block again identified the contracting parties as the Trust Territory government and Marine.

By article XVIII of the agreement, Marine was required to transfer and assign the agreement within six months to

---

[1] The Trust Territory is comprised of 2,141 islands covering an area of approximately 3,000,000 square miles in the southwest Pacific. Three island chains—the Marianas, Marshalls, and Carolines—make up the region of over 92,000 inhabitants popularly referred to as Micronesia. Administratively, the territory is divided into six districts, with a capital at Saipan in the Mariana chain.

Micronesia Interoceans Line, Inc. (MILI), which was to be organized and capitalized by Marine with substantial participation by citizens of the Trust Territory. The article also provided that, during the contract's tenure, "the Carrier shall operate the Vessels under the flag of the Trust Territory * * *." On August 8, 1968, articles of incorporation were filed for MILI with the Registrar of Corporations in Saipan. MILI's principal office and place of business were listed as Saipan. The agreement was thereupon transferred and assigned to MILI.

On September 22, 1971, Barclays Bank of San Francisco informed the Trust Territory government that MILI would not be extending a $500,000 letter of credit which it had opened in the Trust Territory government's favor, and that the letter would expire in two days. The Trust Territory was already concerned with numerous other alleged performance deficiencies on MILI's part, and on September 29, 1971 notified the corporation of its intention to terminate for default as authorized by article XX of the agreement.

After meetings between the president of Marine, which still owned substantial shares of MILI, and the Trust Territory attorney general, an agreement was signed by the Territory's High Commissioner and by representatives of MILI. The agreement *inter alia* withdrew notice of default, suspended article XXVI (which required Marine to furnish a $500,000 performance bond), and set up a trust for certain MILI shares held by Marine.

On October 20, 1971, Marine, MILI and the Trust Territory attorney general became parties to a "Trust Agreement" by which the attorney general was designated trustee of the 210,000 class B shares in MILI owned by Marine. A complete divestment of Marine's stock in MILI, in consideration of the Trust Territory government withdrawing its notice of cancellation of the 1968 contract, was then accomplished. Subsequent to plaintiffs' filing of petition on March 30, 1973, on the breach and unconstitutional taking issues raised above, the corporate name of MILI was changed to Transpacific.[2]

[2] The parties' briefs present a less than clear-cut scenario of the specifics of plaintiffs' claims. Because the present posture of the case does not require the court to reach the merits, however, we do not pause over this shortcoming.

Defendant has moved for summary judgment on both issues. For the reasons which follow, we grant the motion on both issues.

The Breach Claim

As a forum for claims against the Federal Government, a necessary antecedent to our jurisdiction is a waiver by the Government of its sovereign immunity from suit. *National State Bank of Newark, et al.* v. *United States*, 174 Ct. Cl. 872, 876, 357 F. 2d 704, 706 (1966). In our general jurisdictional statute, 28 U.S.C. § 1491 (Supp. II, 1972), Congress has waived the immunity of the United States in a host of actions, including those based upon express or implied contracts.

Plaintiffs invoke this jurisdictional statute by asserting their claim arises from a contract, either express or implied, with the United States. Defendant counters that plaintiffs fail to state a claim within the court's jurisdiction since no privity of contract exists between Transpacific and the United States. We agree with defendant.[3]

The analysis which follows deals with the relevant questions of (1) whether defendant is an express party to the subject, written contract; (2) whether defendant is a principal to the subject, written contract; (3) whether an implied contract exists between the parties.

Plaintiffs' claim is purportedly based upon the contract for sea transportation services of August 1, 1968. The United States, however, was not a party to that agreement. As recited in the preamble to the contract and again in the signature block, the parties to the agreement were the Trust Territory government and Transpacific (as successor to Marine).

Since defendant was not a named party contracting with Transpacific, the court can have jurisdiction over this claim only if, as a matter of law, the Trust Territory government was an agency or instrumentality of the United States

[3] Defendant also alleges that the court lacks jurisdiction because the subject matter of the claim arises from a treaty, 28 U.S.C. § 1502 (1970), and that plaintiffs lack standing to bring a "derivative" suit since their corporation is the real party in interest, Ct. Cl. Rule 61(a). *See Algonac Manufacturing Co.* v. *United States*, 192 Ct. Cl. 649, 662, 428 F. 2d 1241, 1249 (1970). Because of the basis on which we grant defendant's motion for summary judgment, we find it unnecessary to reach these issues.

acting within the scope of its authority in entering into the disputed agreement and thereby binding defendant as a principal to it. *D. R. Smalley & Sons, Inc.* v. *United States*, 178 Ct. Cl. 593, 372 F. 2d 505, *cert. denied*, 389 U.S. 835 (1967); *Housing Corp. of America* v. *United States*, 199 Ct. Cl. 705, 468 F. 2d 922 (1972); *Raymond Constructors of Africa, Ltd.* v. *United States*, 188 Ct. Cl. 147, 411 F. 2d 1227 (1969). Under such circumstances, the Federal Government would be considered to have waived its sovereign immunity from suit on this contract. *National State Bank of Newark* v. *United States*, *supra* at 876–77, 357 F. 2d at 706.

It is therefore necessary to examine the exact nature of the relationship between the Trust Territory government and the United States. This relationship traces to World War II, when the islands of Micronesia came under United States military control with the defeat of Japan, which had held a mandate over the islands under the League of Nations. The establishment of the United Nations (U.N.) and its Trusteeship Council, with jurisdiction over non-self-governing territories, resulted in the execution of trusteeship agreements between the U.N. and those signatory powers in *de facto* possession of such territories. One such agreement, ratified by the Security Council on April 2, 1947, and approved by Congressional joint resolution on July 18, 1947, designated the United States as the "administering authority" over the Pacific Islands Trust Territory. 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189.

This "bi-lateral contract" with the Security Council represented a means for the United States to reconcile its new strategic interests in the Pacific with its announced policy against self-aggrandizement as a result of the war. Trusteeship served as a workable alternative to the military departments' urgings for outright annexation of the former Japanese mandate. Note, *A Macrostudy of Micronesia: The Ending of a Trusteeship*, 18 N.Y.L.F. 139, 144 (1972).

Article 3 of the trusteeship agreement provided:

> The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may

> consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

Under article 4, however, the United States was obligated to discharge its trustee duties "in accordance with the Charter of the United Nations, and the provisions of this agreement," and to apply the objectives of the trusteeship system in this effort. *See* U.N. Charter arts. 75–77, 82–84. These broad goals include to "foster the development of such political institutions as are suited to the trust territory" and to "promote the economic advancement and self-sufficiency of the inhabitants." Trusteeship Agreement, art. 6, 61 Stat. 3302. Toward this end, the State Department publishes an annual report to the U.N. and U.N. observers have been allowed to conduct periodic inspections of the islands.

In entering the trusteeship agreement, the United States made clear that it did not consider its role of trustee to encompass the highest form of political authority over the islands, *i.e.*, sovereignty. 16 Dep't State Bull. 416, 417 (1947). This unilateral disavowal of sovereignty is in accord with the accepted view of the status of the trust territories under international law. As concluded by one leading authority:

> there seems to be general concurrence with respect to the present trust territories, as there was with respect to the mandated territories, that wherever sovereignty does rest it is not in the administering power.

Sayre, *Legal Problems Arising from the United Nations Trusteeship System*, 42 Am. J. Int'l L. 263, 271 (1948).[4]

In undertaking administration of the trusteeship, Congress, by the Act of June 30, 1954, *as amended*, 48 U.S.C. § 1681 (1970), directed:

> (a) Until Congress shall further provide for the government of the Trust Territory for the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such

[4] Though by no means a settled point, the most persuasive view on this question is that sovereignty rests in the people of Micronesia and is held in trust for them by the administering power. *Cf. Neely* v. *Henkel*, 180 U.S. 109, 120 (1901); *Cobb* v. *United States*, 191 F. 2d 604, 608 (9th Cir.), *cert. denied*, 342 U.S. 913 (1952).

> agency as the President of the United States may direct and authorize.

Prior to 1962, responsibility for administration of the islands was divided between Interior and the Department of the Navy. Effective July 1, 1962, the President, by Executive Order 11021, 27 Fed. Reg. 4409, redelegated his authority for civil administration of the Territory to the Secretary of the Interior to

> take such actions as may be necessary and appropriate to carry out the obligations assumed by the United States as the administering authority of the trust territory *under the terms of the trusteeship agreement and under the Charter of the United Nations* [emphasis added].

Pursuant to these obligations, the Secretary established in 1967 a Trust Territory government which included legislative, judicial, and executive branches, with the High Commissioner as chief executive of the Territory. Secretarial Order No. 2918, Dec. 27, 1968, 34 Fed. Reg. 157. The Secretary also reserved to himself or his delegate the power and authority to contract, "on behalf of the Trust Territory," for the purchase, charter, maintenance and operation of aircraft and surface vessels in the islands. Secretarial Order No. 2902, Nov. 15, 1967, 32 Fed. Reg. 16058.

While the United States has retained direct control in certain fields, such as foreign affairs, the daily administration of the islands has largely shifted into the hands of the local government. The Territory operates under its own comprehensive legal code. Inhabitants of the islands are citizens of the Territory, not of the United States.

Plaintiffs have failed to cite one case to support their view that the Trust Territory acts in an agency capacity on behalf of the United States. The case law reveals that the concept of sovereignty as concerns American outlying territories is a pliable one for purposes of resolving domestic jurisdictional disputes; it must be applied in the context of specific statutory terminology and legal doctrine. *See Kawananakoa* v. *Polyblank*, 205 U.S. 349, 353–54 (1907); *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 677–79, *rehearing denied*, 325 U.S. 892 (1945); *Harris* v. *Boreham*, 233 F. 2d 110, 113–14 (3d Cir. 1956); *Alig* v. *Trust Territory*, 3 TTR 603, 609–10, 615 (1967). In the framework of several statutory schemes,

however, the courts have consistently held the Trust Territory to be either a "foreign country" or something other than a "federal agency." *Callas* v. *United States*, 253 F. 2d 838, 841–42 (2d Cir. 1958) (Federal Tort Claims Act not applicable to Trust Territory); *People of Saipan* v. *Department of the Interior*, 356 F. Supp. 645, 648 (D. Haw. 1973) (Administrative Procedure Act and National Environmental Protection Act not applicable); *Brunell* v. *United States*, 77 F. Supp. 68, 72 (S.D.N.Y. 1948) (Federal Tort Claims Act not applicable).

While the jurisdictional issue at hand turns on privity of contract rather than statutory construction, the Trust Territory precedents urge persuasively that the Territory government is not an agency of the United States for contract purposes. This conclusion finds authority in an opinion letter of the Comptroller General of the United States. In his opinion B–131569 of June 11, 1957, the Comptroller General held that the Trust Territory government could not utilize federal transportation requests to defray official travel expenses of its employees since "none of the territorial governments, including the Government of the Trust Territory, are regarded as Federal agencies or instrumentalities." Nor is this result affected by the fact that the salaries of the High Commissioner and his subordinates are paid from federal funds. The important point here is that their positions were established as offices of the Trust Territory, not of the United States. *Harris* v. *Boreham*, *supra* at 115–16. *See also Dudley* v. *Commissioner*, 258 F. 2d 182, 188 (3d Cir. 1958).

Moreover, the facts as a whole do not support the assertion that the Trust Territory was "doing work of the [United States] government" in entering the contract in dispute. *National State Bank of Newark, et al.* v. *United States*, *supra* at 877–79, 357 F. 2d at 707–08. The contract solicitation in the instant case made it clear that the successful bidder would accept an offer by the Trust Territory government, operating as a foreign country outside the sovereignty of the United States. *Compare Escote Manufacturing Co.* v. *United States*, 144 Ct. Cl. 452, 458–59, 169 F. Supp. 483, 488 (1959).

Plaintiffs forcefully argue that the contract was actually negotiated in part at Interior and that *de facto* control by

defendant of Trust Territory officials, and hence of the contract's performance, was maintained through the pervasive authority of the Secretary of the Interior, especially as regards shipping services for the islands. Nevertheless, the "whole bundle of controls" here described is insufficient to establish defendant's liability under the contract. *Woodbury* v. *United States*, 176 Ct. Cl. 838, 851–52, 858–59, 364 F. 2d 993, 1000, 1004 (1966). The court has refused to recognize defendant as a liable principal in other cases involving more direct forms of control over the contract's performance. *Housing Corp. of America* v. *United States*, *supra* at 710, 468 F. 2d at 924; *D. R. Smalley & Sons, Inc.* v. *United States*, *supra* at 598, 372 F. 2d at 508.

In the case of *Best, et al.* v. *United States*, 154 Ct. Cl. 827, 292 F. 2d 274 (1961), involving a situation analogous to that at hand, the court refused to find a contract binding on defendant. There, the U.S. Army in occupied Germany invited bids for a construction project, awarded the work to the lowest responsive bidder, imposed a provision for liquidated damages for late completion, and provided an appeal procedure for performance disputes.

> But the Army did not intend to make a contract which would obligate the United States, it repeatedly warned the plaintiff that it was not doing so, and it would have had no authority to do so if it had tried. The United States Army in Germany, in the relation involved in this case, *was an agency of the Allied High Commission for Germany, an international body* with no capacity to sue or be sued [emphasis added].

154 Ct. Cl. at 836, 292 F. 2d at 278–79. We believe defendant's case is even stronger here since the contract solicitation made clear at the outset that the Trust Territory, not defendant, was the offering party.

Had plaintiffs wished to obligate defendant in the disputed undertaking, they should have sought a different drafting of the agreement. At this stage, they have failed to carry their burden of convincing the court to widen the obligation under an integrated document defendant deliberately chose not to sign. *Compare Woodbury* v. *United States*, *supra* at 850, 852, 364 F. 2d at 999, 1000, *with Raymond Constructors of Africa, Ltd.* v. *United States*, *supra* at 165–66, 411 F. 2d at 1237. Be-

cause defendant was not a party to the agreement and the Trust Territory is not an agency or instrumentality of the United States, no express contract within the court's jurisdiction is found.

Nor may an *implied* contract be inferred from the circumstances at hand. The general rule in government contract law is that a contract implied in fact [5] is one

> founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.

Baltimore & Ohio R.R. v. *United States*, 261 U.S. 592, 597 (1923); *Algonac Manufacturing Co.* v. *United States*, 192 Ct. Cl. 649, 673–74, 428 F. 2d 1241, 1255 (1970).

Here, there can have been no meeting of minds between the United States and plaintiffs with regard to a contractual undertaking since the responsible officers dealing with Transpacific were acting on behalf of the Trust Territory government, not the United States. This should have been clear to Transpacific, not only from the solicitation for orders, but from Secretarial Order No. 2902, 32 Fed. Reg. 16058, *as amended*, 33 Fed. Reg. 18201, which expressly delegated authority to the High Commissioner and the Director of the Office of Territories to contract for shipping services "*on behalf of the Trust Territory of the Pacific Islands*" [emphasis added]. As a matter of law, Transpacific had constructive, if not actual, notice of the nature of this delegation of authority, since it was published in the Federal Register. Federal Register Act, 49 Stat. 502, 44 U.S.C. § 1507 (1970); *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 384–85 (1947).

Thus, any representation by an official of either Interior or the Trust Territory that he was acting on behalf of the United States was outside his scope of authority and the United States is not bound by such act or representation. *See Federal Crop Insurance Corp.* v. *Merrill*, *supra* at 384; *Housing Corp. of America* v. *United States*, *supra* at 711, 468 F. 2d at 925. *Compare Thomson* v. *United States*, 174

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[5] We presume that plaintiff alleges an implied-in-*fact* contract since the court lacks jurisdiction over contracts implied in *law*. *Merritt* v. *United States*, 267 U.S. 338, 341 (1925); *Putnam Mills Corp.* v. *United States*, 202 Ct. Cl. 1, 8 n. 3, 479 F. 2d 1334, 1337 n. 3 (1973).

Ct. Cl. 780, 790–91, 357 F. 2d 683, 688–89 (1966). The totality of circumstances at bar does not warrant the court concluding that the "legal equivalent of mutual consent" existed between the parties with regard to the undertaking in dispute. *See J. C. Pitman & Sons, Inc.* v. *United States*, 161 Ct. Cl. 701, 705, 317 F. 2d 366, 368 (1963).

In summary, defendant is not an express party or a principal to the subject, written contract. Nor does an implied contract exist between the parties.

In an effort to salvage their petition, plaintiffs assert that this court's determination that it lacks jurisdiction would leave plaintiffs without a forum in which to seek relief on the present claim. While such a result could not in itself affect this court's jurisdiction, which is statutorily defined, *Kyer* v. *United States*, 177 Ct. Cl. 747, 754, 369 F. 2d 714, 719 (1966), *cert. denied*, 387 U.S. 929 (1967), we cannot fail to observe that since September 1967 the Trust Territory government has granted "exclusive jurisdiction" to the trial division of the Territory's High Court for claims against the Territory government founded upon "any express or implied contract with the Government of the Trust Territory * * *." I Code of the Trust Territory of the Pacific Islands, § 251(1)(b) (Steincipher ed. 1970); *Rivera* v. *Trust Territory*, 4 TTR 140 (1968). Under this provision, plaintiffs would clearly have a cause of action in Trust Territory court for the present claim.

The Taking Claim

Plaintiffs' second basis for recovery is that their private property was taken for public use by the United States through its appointees, agents, and employees without the just compensation required by the Fifth Amendment. Plaintiffs allege that certain representatives of the Trust Territory government, including its attorney general and the chief of its transportation division, coerced the president of Marine to agree to the establishment of a trust, consisting of Marine's shares in Transpacific, by threatening to cancel Transpacific's contract with the Trust Territory for default. Plaintiffs claim that the creation of this trust effectively vested control of Transpacific in the Trust Territory government.

Defendant asserts that the Trust Territory is a foreign

state and that it is an elemental principle of constitutional law that the Constitution does not extend even to territories or possessions of the United States until Congress passes an enabling act to that effect, which here has not been done. *Fleming* v. *Page*, 50 U.S. (9 How.) 603 (1850); *Hooven & Allison Co.* v. *Evatt*, *supra*.

While we hold for defendant on this issue, we reject its constitutional assertions as overly rigid. The just compensation clause of the Fifth Amendment has, in fact, been applied to takings of property located outside the United States, even in the absence of Congressional extension of the Constitution to such foreign soil. *Seery* v. *United States*, 130 Ct. Cl. 481, 127 F. Supp. 601 (1955); *Turney* v. *United States*, 126 Ct. Cl. 202, 115 F. Supp. 457 (1953); *Fleming* v. *United States*, 173 Ct. Cl. 426, 352 F. 2d 533 (1965).

A key element of these precedents, however, is that each concerned an alleged taking *by the United States*, regardless of where the property was located. Thus, in the present case, just as plaintiffs had to demonstrate that the United States was directly or indirectly contracting with plaintiffs in their breach claim *supra*, here they must show the United States carried out the alleged taking of property. This they have failed to do.

Plaintiffs' taking claims focus only on the actions of Trust Territory officials, specifically the islands' attorney general and chief of the transportation division. As explained in detail *supra*, these officials were without authority to act on behalf of the United States. In the analogous case of *Standard-Vacuum Oil Co.* v. *United States*, 139 Ct. Cl. 113, 153 F. Supp. 465, *cert. denied*, 355 U.S. 893 (1957), the court concluded that no unconstitutional taking, as a result of General Douglas MacArthur's actions in occupied Japan, had been alleged since the Supreme Commander had acted *on behalf of the Allied Powers* there, not of the United States.

Plaintiffs' argument finds its strongest support in the *Turney* precedent. That case involved an embargo by the independent government of the Philippines against removal from the Philippines of plaintiff's property until such time as plaintiff agreed to return certain of the property to the United States. Because the Manila government's action was prompted by "irresistable pressure" from the United States,

the court held an unconstitutional taking by defendant had occurred. 126 Ct. Cl. at 214, 115 F. Supp. at 463–64. Defendant's affirmative efforts, in part through the medium of the Philippines government, to regain the disputed property was well documented in that case. The more nebulous forms of United States influence within the Trust Territory government on which plaintiffs here rely, on the other hand, are insufficient to make defendant constructively responsible for the taking alleged. *See Best, et al.* v. *United States*, *supra* at 836, 292 F. 2d at 279; *D. R. Smalley & Sons, Inc.* v. *United States*, *supra* at 599, 372 F. 2d at 508.

This result is not inconsistent with our acceptance of jurisdiction in the case of *Fleming* v. *United States*, *supra*, since the taking of property in the Trust Territory there complained of was by the United States Navy, undisputedly acting on behalf of defendant. We must conclude that the present petition fails to allege action by defendant necessary to make out an unconstitutional taking claim within our jurisdiction. As with regard to their contract claim, it seems that, if plaintiffs have any remedy for the alleged confiscation of their corporate assets, it is through civil action against the Trust Territory government for unliquidated damages in the trial division of the Territory High Court. I Code of the Trust Territory of the Pacific Islands, § 251(1)(b) (Steincipher ed. 1970).

In summary, plaintiffs have failed to describe a claim, either for breach of contract or unconstitutional taking, within the jurisdiction of this court. Accordingly, defendant's motion for summary judgment is granted and the petition is dismissed.

NICHOLS, *Judge*, concurring:

I join in the opinion and judgment of the court. I had difficulty with this case and at the outset would not have decided it in the way the majority chooses. I come out now on defendant's side but it may be helpful to state the reasons why.

There is no doubt in my mind that under the United Nations trusteeship the Congress could have created a Trust Territory government that was, in fact and law, just another agency of the Federal government. Had it done so, a contract such as we have here, made as this was made, and dealing

with the subject this does, could have been enforced in this court, and we could have considered and adjudicated the alleged taking also. On the other hand there is no reason deriving from the source of its legislative power, the trusteeship agreement with the U.N., why the Congress could not have set up the same kind of territorial sovereign it has traditionally set up for civil rule of territories brought under its wing in more usual ways. Our national traditions oppose the former alternative and favor the latter. Normal attributes of such territorial governments are that they do not contract or expropriate property as agents of the United States, but on their own behalf, and to enforce their liabilities, their own consent to be sued, not that of the United States must be obtained. *Porto Rico* v. *Rosaly*, 227 U.S. 270 (1913).

The enabling legislation, 48 U.S.C. § 1681, reads on its face to set up not a typical territorial government but a simple dictatorship. The President can govern the Trust Territory in any way he pleases. The first tier delegation of authority to the Secretary of the Interior in E.O. 11021 is equally broad and sweeping. Only in the second tier, the Secretary's Departmental Order No. 2918, does the structure of a territorial government take form.

As I understand it the Royal charters setting up the American colonies in the 17th and 18th centuries did not require participation by Parliament. In our system, under our Constitution, chartering territorial governments have traditionally required the participation of the Congress. Art. IV, Sec. 3 of the Constitution seems to visualize this. The differences in the situation of a citizen or subject that depend on whether he is directly ruled from Washington, or by a territorial government, are enormous. I seriously question whether it is possible to confer the character of a territorial government upon a body of United States Government officials, with all its formidable consequences, without the participation of Congress. It would follow that language in a second tier delegation, purporting to do this, would at least fail to have the important implied and collateral results that occur when Congress itself speaks. The agency would remain an agency despite the Secretary's efforts to make it a territorial sovereign. Its contracts would be contracts of the United States.

The Congress has, however, enacted that the High Commissioner, provided for in Part II, Sec. 1 of Departmental Order No. 2918, shall be appointed by the President and confirmed by the Senate. Public Law 90–16, § 2, 81 Stat. 15, 48 U.S.C. § 1681(a). The legislative history recites enough of the governmental setup under the High Commissioner to show that it all came under the scrutiny of Congress at that time (1967) and was apparently approved except for the modification indicated. Senate Report No. 62 and Conf. Rep. No. 208, 90th Cong., 1st Sess., 1 U.S.C. Cong. & Administrative News 1158 and ff. (1967). The following permanent code sections also hang pendant upon the structure the Secretary fashioned. I conclude that the purported territorial government can no longer be considered an executive creation pure and simple. This way of Congressional backing into the founding of a civil government no doubt has its explanation in the legitimate interests of the State and Navy Departments in the area, as recognized by E.O. 11021. The plaintiffs herein do not come to grips with the concept of a territorial sovereign in operation here, and do not show clearly how they can recover if a territorial sovereign was in existence and was the ostensible contracting party.

For all these reasons, my initial amazement at the bald text of 48 U.S.C. § 1681 has much abated and I am now prepared to agree that the involved contract was not made by an agency of the United States. The other conclusions of the court are inescapable.

APPENDIX B

UNITED STATES CODE, TITLE 28:

§1491. Claims against United States generally, actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just.

Nothing herein shall be construed to give the Court of Claims jurisdiction in suits against, or founded on actions of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended, with respect to suits by or against the Authority.

APPENDIX C

EXECUTIVE ORDER 11021

ADMINISTRATION OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS BY THE SECRETARY OF THE INTERIOR

WHEREAS the Trust Territory of the Pacific Islands was laced under the trusteeship system established in the Charter f the United Nations by means of a trusteeship agreement approved by the Security Council of the United Nations on April 2, 947, and by the United State Government on July 18, 1947, after lue constitutional process (hereinafter referred to as the trusteehip agreement); and

WHEREAS the United State of America was designated under he terms of the trusteeship agreement as the administering authority of the Trust Territory referred to above (hereinafter eferred to as the trust territory); and

WHEREAS the United States has heretofore assumed obligations for the civil administration of the trust territory and has arried out such civil administration under the provisions of Executive Orders Nos. 9875 of July 18, 1947, 10265 of June 29, 1951, 0198 of November 10, 1952, and 10470 of July 17, 1953; and

WHEREAS thereunder the Secretary of the Navy is now responsible for the civil administration of the Northern Mariana slands except the Island of Rota and the Secretary of the Interior s responsible for the civil administration of all of the remainder f the trust territory; and

WHEREAS it appears that the purposes of the trusteeship greement can best be effectuated at this time by placing in the Secretary of the Interior responsibility for the civil administration f all of the trust territory:

NOW, THEREFORE, by virtue of the authority vested in me y the Act of June 30, 1954 (68 Stat. 330; 48 U.S.C. 1681) and as President of the United States, it is ordered as follows:

Section 1. Responsibility of Secretary of the Interior. The esponsibility for the administration of civil government in all of he trust territory, and all executive, legislative, and judicial authority necessary for that administration, are hereby vested in he Secretary of the Interior. Subject to such policies as the Presi-

dent may from time to time prescribe, and in harmony with applicable law, and, where advantageous, in collaboration with other departments and agencies of the Government, the Secretary of the Interior shall take such actions as may be necessary and appropriate to carry out the obligations assumed by the United States as the administering authority of the trust territory under the terms of the trusteeship agreement and under the Charter of the United Nations: **Provided however,** That the authority to specify parts or all of the trust territory as closed for security reasons and to determine the extent to which Articles 87 and 88 of the Charter of the United Nations shall be applicable to such closed areas, in accordance with Article 13 of the trusteeship agreement, shall be exercised by the President: **And provided further,** That the Secretary of the Interior shall keep the Secretary of State currently informed of activities in the trust territory affecting the foreign policy of the United States and shall consult with the Secretary of State on questions of policy concerning the trust territory which relate to the foreign policy of the United States, and that all relations between the departments and agencies of the Government and appropriate organs of the United Nations with respect to the trust territory shall be conducted through the Secretary of State.

Section 2. Redelegation of authority. The executive, legislative, and judicial authority provided for in section 1 of this order may be exercised through such officers or employees of the Department of the Interior, or through such other persons under the jurisdiction of the Secretary of the Interior, as the Secretary may designate, and shall be exercised in such manner as the Secretary, or any person or persons acting under the authority of the Secretary, may direct or authorize.

Section 3. Cooperation with Department of the Interior. The executive departments and agencies of the Government shall cooperate with the Department of the Interior in the effectuation of the provisions of this order.

Section 4. Prior Orders. To the extent not heretofore superseded or otherwise rendered inapplicable, the following are hereby superseded:

(1) Executive Order No. 10265 of June 29, 1951.

(2) Executive Order No. 10408 of November 10, 1952.

(3) Executive Order No. 10470 of July 17, 1953.

Section 5. Saving provisions. (a) Existing laws, regulations, orders, appointments, or other acts promulgated, made, or taken

by the Secretary of the Interior or his delegates under the authority of Executive Order No. 10265, as amended and in effect until they are superseded in pursuance of the provisions of this order.

(b) Nothing contained in this order shall be construed as modifying the rights or obligation of the United States under the provisions of the trusteeship agreement or as affecting or modifying the responsibility of the Secretary of State to interpret the rights and obligations of the United States arising out of that agreement.

Section 6. Effective date. The provisions of this order shall become effective on July 1, 1962.

/s/JOHN F. KENNEDY

The White House
May 7, 1962.

[F.R. Doc. 62-4556; Filed, May 8, 1962; 9:39 a.m.]

DEPARTMENT OF INTERIOR ORDER NO. 2902

AUTHORITY RESERVED TO THE SECRETARY OF THE INTERIOR OR HIS DELEGATE—TRUST TERRITORY

WHEREAS, pursuant to Articles 6 and 8 of the Trusteeship Agreement between the United States and the Security Council of the United Nations, the United States is obligated to improve and regulate the means of transportation to, from and within the Trust Territory; and

WHEREAS, the Congress of the United States has authorized the expenditures of appropriations available for the administration of the Trust Territory for the purchase, charter, maintenance, and operating of aircraft and surface vessels for official and for commercial transportation purposes found by the Secretary of the Interior to be necessary, 43 U.S.C. (1964 Ed.) 1687;

NOW, THEREFORE, effective upon the date of publication of this Order, the following powers and authorities are hereby reserved to the Secretary of the Interior or his specifically thereunto authorized delegate:

1. The power and authority, on behalf of the Trust Territory of the Pacific Islands, to enter into contracts for the purchase, charter, maintenance, or operation of aircraft and surface vessels and for services associated therewith, and to grant franchises for such operations and services for both official and commercial transportation purposes found by the Secretary or his delegate to be useful, beneficial and necessary.

2. The High Commissioner of the Trust Territory of the Pacific Islands is designated as the authorized delegate to exercise the power and authority reserved hereunder.

/s/KENNETH HOLUM
Acting Secretary of the Interior

Nov. 15, 1967

ORDER NO. 2902, Amendment No. 1

WHEREAS, by Secretarial Order No. 2902, published November 22, 1967, 32 F.R. 16058, there was reserved to the Secretary of the Interior or his delegate the power and authority, on behalf of the Trust Territory of the Pacific Islands, to enter into contracts for the purchase, charter, maintenance, or operation of aircraft and surface vessels and for services associated therewith, and to grant franchises for such operations and services for both official and commercial transportation purposes found by the Secretary or his delegate to be useful, beneficial and necessary; and

WHEREAS, only the High Commissioner of the Trust Territory of the Pacific Islands was designated as the authorized delegate to exercise the power and authority reserved therein;

NOW, THEREFORE, effective upon the signing of this Order, paragraph No. 2 of Secretarial Order No. 2902, is amended by adding a new authorized delegate as follows:

2. The Director, Office of Territories, or the High Commissioner of the Trust Territory of the Pacific Islands are designated as the authorized delegates to exercise the power and authority reserved hereunder.

/s/STEWART L. UDALL
Secretary of the Interior

DEPARTMENT OF INTERIOR ORDER NO. 2918

GOVERNMENT OF THE
TRUST TERRITORY OF THE PACIFIC ISLANDS

WHEREAS, pursuant to the Trusteeship Agreement between the United States and the Security Council of the United Nations, the United States has undertaken to promote self-government in the Trust Territory of the Pacific Islands; and

WHEREAS, Department of the Interior Order No. 2876 of January 30, 1964, as amended, set forth the extent and nature of the authority of the Government of the Trust Territory of the Pacific Islands; and

WHEREAS, Department of the Interior Order No. 2882 of September 28, 1964, as amended, created the Congress of Micronesia and granted legislative authority thereto; and

WHEREAS, it is appropriate that the two aforesaid basic Orders, as amended, be modified in minor particulars, consolidated in one basic order, and reissued, with all amendments therein incorporated,

NOW, THEREFORE, the following single basic Order respecting the Government of the Trust Territory of the Pacific Islands is issued:

PART I. Purpose

The purpose of this Order is to delimit the extent and nature of the authority of the Government of the Trust Territory of the Pacific Islands (hereinafter called "the Trust Territory"), as it will be exercised under the jurisdiction of the Secretary of the Interior (hereinafter called "the Secretary"), pursuant to Executive Order No. 11021 of May 7, 1962, and to prescribe the manner in which the relationships of the Government of the Trust Territory shall be established and maintained with the Congress, the Department of the Interior and other Federal agencies, and with foreign governments and international bodies.

PART II. Executive Authority

Section 1. The executive authority of the Government of the Trust Territory, and the responsibility for carrying out the international obligations undertaken by the United Nations with respect to the Trust Territory, shall be vested in a High Commissioner of the Trust Territory and shall be exercised and discharged under the supervision and direction of the Secretary.

The Secretary shall appoint a Deputy High Commissioner, who shall have all the powers of the High Commissioner in the case of a vacancy in the office of High Commissioner or the disability or temporary absence of the High Commissioner.

Section 2. The relations of the Government of the Trust Territory with the Congress of the United States on all legislative matters, including appropriations, shall be conducted through the Department of the Interior.

Section 3. With freedom to consult directly with the Secretary when necessary, the High Commissioner of the Trust Territory shall normally communicate with the Secretary of the Interior through the Director of the Office of Territories. The High Commissioner shall be responsible for all United States property in the

Trust Territory which is required for the operation of the Government of the Trust Territory and for which the Department of the Interior has administrative responsibility. The High Commissioner shall perform such other functions for the Department of the Interior in the Trust Territory as may be delegated to him by the Secretary.

Section 4. Initial contact by the Government of the Trust Territory with Federal agencies outside the Department of the Interior on other than routine matters shall be established through the Office of Territories of the Department of the Interior. Once the relationship has been established, direct contact between the Government of the Trust Territory and the Federal agencies concerned may be maintained, in which event the Office of Territories shall be kept informed of significant developments in the relationship.

Section 5. Communications of the Government of the Trust Territory with foreign governments and international bodies shall be cleared through the Department of the Interior for transmittal by the Department of State, unless some other procedure is approved by the Secretary of the Interior.

Section 6. In exercising his authority the High Commissioner shall obtain prior Secretarial approval of any significant deviation from the budget justification presented to the Congress, and any significant transfer of funds between programs or between administration and construction funds.

PART III. Legislative Authority

Section 1. **Organization.** The Legislature of the Trust Territory of the Pacific Islands shall be known as the "Congress of Micronesia" and shall consist of two Houses, the Senate and the House of Representatives. The two Houses shall sit separately except as otherwise provided herein.

When the Congress shall convene, each House shall organize by the election of one of its number as presiding officer and such presiding officer shall be designated by the title of "President of the Senate" or "Speaker of the House of Representatives," as the case may be. When the Congress meets in joint session, the Speaker of the House of Representatives shall preside.

Section 2. **Legislative Power.** The legislative power of the Congress of Micronesia shall extend to all rightful subjects of legislation, except that no legislation may be inconsistent with

(a) treaties or international agreements of the United States;

(b) laws of the United States applicable to the Trust Territory;

(c) Executive Orders of the President of the United States and orders of the Secretary of the Interior; or

(d) Sections 1 through 12 of the Code of the Trust Territory.

No law shall be passed by the Congress imposing any tax upon property of the United States or property of the Trust Territory of the Pacific Islands; nor shall the property of nonresidents be taxed at a higher rate than the property of residents. No import or export levies shall be imposed on goods transported between or among the Districts of the Trust Territory, as described in Section 39 of the Code of the Trust Territory, or any political subdivision thereof, and the levy of duties on goods imported into the Trust Territory is hereby reserved to the Congress of Micronesia and the High Commissioner.

Section 3. **Powers of the High Commissioner.** At the opening of a legislative session and at any time thereafter the High Commissioner may submit to the Congress and recommend the enactment of legislation.

Section 4. **Budget.** Money bills enacted by the Congress of Micronesia shall not provide for the appropriation of funds in excess of such amounts as are available from revenues raised pursuant to the tax laws and other revenue laws of the Trust Territory: **Provided,** That the Secretary of the Interior shall, from time to time, define the term 'revenue' as used herein, so as generally to exclude therefrom all sums attributable to user charges or service related reimbursements to the Government of the Trust Territory. Prior to his final submission to the Secretary of the Interior of requests for Federal funds necessary for the support of governmental functions in the Trust Territory, the High Commissioner shall prepare a preliminary budget plan. He shall submit such plan to the Congress of Micronesia in joint session for its review and recommendations with respect to such portions as relate to expenditures of funds proposed to be appropriated by the Congress of the United States. With respect to such portions of the preliminary budget plan, the High Commissioner shall adopt such recommendations of the Congress as he may deem appropriate, but he shall transmit to the Secretary of the Interior all recommendations he has not adopted.

Section 5. **Membership.** For the purpose of representation in the Congress, the Trust Territory is divided into six district as described in Section 39 of the Code of the Trust Territory.

The Senate shall consist of twelve members, who shall be known as "Senators," of which each District shall elect two.

The House of Representatives shall consist of twenty-one members, who shall be known as "Representatives," and who shall be elected from each District as follows:

In the Mariana Islands District, three;
In the Marshall Islands District, four;
In the Palau District, three;
In the Ponape District, four;
In the Truk District, five;
In the Yap District, two.

Each of the six Administrative Districts shall be subdivided initially into single member election districts of approximately equal population, in such manner as the High Commissioner shall determine, and each such election district shall elect one of the Representatives to which the Administrative District is entitled. Future subdivisions shall be established by law.

Election districts shall be reapportioned every 10 years on the basis of population, but each District (as described in Section 39 of the Trust Territory Code), shall be entitled to at least two representatives. The first such reapportionment shall be made in 1971.

Section 6. **Qualification of Legislators.** In order to be eligible to election as a member of the Congress a person shall:

(a) be a citizen of the Trust Territory for at least five years;

(b) have attained the age of twenty-five years at the time of his election; and

(c) have been a bona fide resident of the District (as described in Section 39 of the Code of the Trust Territory), from which he is elected for at least one year next preceding his election.

No person who has been expelled from the Congress for giving or receiving a bribe or for being an accessory thereto, and no person who has been convicted of a felony by any court of the Trust Territory, a court of one of the States of the United States, or any court with the jurisdiction of a district court of the United States, shall sit in the Congress unless the person so convicted has received a pardon restoring his civil rights.

Section 7. **Franchise.** The franchise shall be vested in residents of the Trust Territory who are citizens of the Trust Territory and eighteen years of age or over. Additional qualifications may be prescribed by the Congress: **Provided,** That no property, language, or income qualification shall ever be imposed or required of any voter, nor shall any discrimination in qualification be made or

based upon literacy, tribal custom, or social position, nor upon difference in race, color, ancestry, sex or religious belief.

Section 8. **General Elections.** General elections shall be held biennially in each even-numbered year on the first Tuesday following the first Monday in November: **Provided,** That in the event of a natural disaster or other Act of God, the effect of which precludes holding the election on the foregoing date, the High Commissioner, with the approval of the Secretary of the Interior, may proclaim a later election date in the affected election district or districts. All elections shall be held in accordance with such procedures as this order and the laws of the Trust Territory may prescribe. Legislators shall be chosen by secret ballot of the qualified electors of their respective district.

Section 9. **Term of office.** Each Senator shall hold office for a term of four years.

Representatives shall each hold office for a term of two years.

The terms of all members of the Congress shall commence at noon on the third day of January following their election, except as otherwise provided by law.

Section 10. **Disqualification of Government Officers and Employees.** Any person employed by any branch of the Government of the Trust Territory, or any political subdivision thereof, shall be accorded leave without pay, for a period not to exceed 30 days prior to and including the day of the election, for the purpose of seeking election to the Congress. If any such person is elected, he shall resign from his employment with the Government of the Trust Territory, or any political subdivision thereof, prior to the date upon which his term of office commences.

No person serving as a member of a legislative body of any political subdivision of the Government of the Trust Territory shall be eligible, while so serving, to serve as a member of the Congress of Micronesia.

No member of the Congress shall receive any compensation, other than that provided for in this order, from the Government of the Trust Territory or any political subdivision thereof.

Section 11. **Sessions.** There shall be a regular session of the Congress held in each year beginning on the second Monday of July and continuing for not to exceed 45 consecutive calendar days. In each odd numbered year there shall also be a regular session of the Congress beginning on the second Monday in January and continuing for not to exceed 15 consecutive calendar days.

The High Commissioner may call special sessions for such

period of time and at such time and place, as in his opinion the public interest may require. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the High Commissioner to the Congress while in such session.

Section 12. **Enacting Clause.** The enacting clause of all bills shall be: "Be it *enacted by the Congress of Micronesia,*" and no law shall be enacted except by bill. Bills may originate in either House, and may be amended or altered or rejected by the other.

Section 13. **Veto by the High Commissioner.** Every bill passed by the Congress shall, before it becomes a law, be presented to the High Commissioner. If the High Commissioner approves the bill, he shall sign it. If the High Commissioner disapproves the bill, he shall, except as hereinafter provided, return it, with his objections, to the Congress within ten consecutive calendar days after it shall have been presented to him. If the High Commissioner does not return the bill within such period, it shall be a law in like manner as if he had signed it, unless the Congress by adjournment prevents its return, in which case it shall be a law if signed by the High Commissioner within thirty days after it shall have been presented to him; otherwise it shall not be a law.

When a bill is returned by the High Commissioner to the Congress with his objections, each House may proceed to reconsider it. If the bill is repassed by both Houses of the Congress by a two-third's majority of the entire membership of each House, it shall again be presented to the High Commissioner. If he does not approve it within 20 days, he shall send it together with his comment thereon to the Secretary of the Interior. Within 90 days after its receipt by him, the Secretary of the Interior shall either approve or disapprove the bill. If he approves it, it shall become a law; otherwise it shall not. The foregoing provision shall not preclude the reconsideration by the Congress during either of the 1969 regular Sessions of any bill returned by the High Commissioner during the 1968 Session.

If any bill presented to the High Commissioner shall contain several items of appropriation of money, he may object to one or more of such items, or any part or parts thereof, while approving the other items or parts of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the item or items, part or parts thereof, to which he objects, and the item or items, part or parts thereof, so objected to shall have the effect of being vetoed.

Section 14. **Adjournment.** Neither House may adjourn for

more than two consecutive days nor may either House adjourn **sine die** without the concurrence of the other House.

Section 15. **Publication of Laws.** The High Commissioner shall cause the resolutions and laws to be published within 30 days after they become law, and shall make provision for their distribution to public officials and sale to the public.

Section 16. **Procedure.**

(a) **Quorum.** A majority of the members of each House shall constitute a quorum of such House for the transaction of business. A smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

(b) **Reading of Bills—Passage.** A bill in order to become a law shall pass two readings in each House, on separate days, the final passage of which in each House shall be by a majority vote of all the members of such House, which vote shall be entered upon the journal.

(c) **Title.** Every legislative act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be embraced in the title.

(d) **Certification of Bills from one House to the other.** Every bill when passed by the House in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and sent to the other House for consideration.

(e) **Amendment and Revisions by Reference.** No law shall be amended or revised by reference to its title only; but in such case the act, as revised, or section or subsection as amended, shall be re-enacted and published at full length.

(f) **Language.** All legislative proceedings shall be conducted in the English language: **Provided,** That knowledge of the English language shall not be a qualification for membership in the Congress. Nothing herein shall limit the right of a member to use his native language if he lacks fluency in English, and the Congress shall provide for interpretation into English in such cases.

(g) **Journal.** Each House shall keep a journal of its proceedings, and publish the same in English.

(h) **Public Sessions.** The business of the Congress, and of the Committee of the Whole, shall be transacted openly and not in secret session.

(i) **Procedural Authority.** The Congress shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes inherent in legislative assemblies, and shall have the power to institute and conduct investigations, issue subpoenas to witnesses and other parties concerned, and administer oaths.

Section 17. **Immunity.** No member of the Congress of Micronesia shall be held to answer before any tribunal other than the Congress for any speech or debate in the Congress, and the members shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the Congress and in going to and from the same.

Section 18. **Compensation and Expenses.** Each member of the Congress shall be entitled to receive an annual salary of $3,500, and the President of the Senate and the Speaker of the House of Representatives shall each be entitled to receive an additional $500, all of which amounts shall be payable from funds appropriated by the Congress of the United States, when such funds are appropriated pursuant to estimates submitted by the Secretary of the Interior. Each member shall also be entitled to receive, from funds available to and appropriated by the Congress of Micronesia, travel expenses, an expense allowance, and per diem at the standard Trust Territory Government rates for each day the member is in a travel status to and from sessions of the Congress, while in session, or while on other official legislative business. Per diem shall not be payable to members of the Congress for a regular or a special session when such session is held on the island of their residence. The term "official legislative business" shall mean only legislative business authorized by the Chairman of the pertinent Committee of the Congress of Micronesia and performed by one or more members of that Committee, as designated by the Chairman. Travel shall be performed by the most expeditious and direct means: **Provided,** That compensation, travel, expense allowances, and per diem shall not be allowed in excess of such amounts as may be budgeted therefor.

Section 19. **Compensation and Expenses, Interim Provision.** Effective for the period beginning January 1, 1969, and ending June 30, 1969, members and officers of the Congress of Micronesia shall be entitled to compensation, travel expenses, an expense allowance, and per diem at the rates prescribed in Section 18 of this order, but all such compensation, travel, expense allowances, and per diem shall be paid from funds available to and appropriated by the Congress of Micronesia.

Section 20. **Appointment to new Offices.** No member of the Congress shall, during the term for which he was elected or during the year following the expiration of the term for which he was elected, be appointed to any office which was created by the Congress during such term.

Section 21. **Vacancies.** Whenever, prior to six months before the date of the next general election, a vacancy occurs, the High Commissioner shall call a special election to fill such vacancy. In case of a vacancy occurring within six months of the next general election, no special election shall be held and the District Administrator of the District wherein such vacancy arises may fill such vacancy by appointment.

Section 22. **Conversion into a Unicameral Body.** At its July 1969 regular session, the Congress shall convene in joint session to consider whether the bicameral legislature should be continued, or whether the legislature should be converted into a unicameral body. The final recommendation to the High Commissioner shall be adopted by a majority vote, and the recommendation shall be submitted to the High Commissioner and by him to the Secretary of the Interior.

Section 23. **Legislative Counsel.** The Congress of Micronesia may by joint resolution nominate a legislative counsel of its own choosing. The salary and other benefits available to such legislative counsel shall be established and paid by the Congress of Micronesia. The Congress of Micronesia may make budgetary provision for such supporting staff for the legislative counsel and the legislature as it may deem necessary.

Section 24. **Amendment.** This Part may be amended only by further order of the Secretary of the Interior. The Congress may, during any regular session, by a two-thirds majority vote of the membership of each House, recommend to the High Commissioner the amendment of any Section of this Part. The High Commissioner shall transmit such recommendation, together with his own recommendations thereon, to the Secretary of the Interior.

PART IV. Judicial Authority.

The judicial authority of the Government of the Trust Territory shall be vested in a High Court for the Trust Territory and such other courts as may be established pursuant to law. The Secretary shall appoint the Chief Justice and Associate Justices of the High Court, may make temporary appointments when a vacancy exists, and in addition may appoint temporary judges to serve on the High Court. The judicial authority shall be indepen-

dent of the executive and legislative powers. Budgetary requests for the territorial judiciary, with supporting justification, shall be drawn up by the Chief Justice of the Trust Territory and submitted for the approval of the Department of the Interior by the High Commissioner of the Trust Territory as a separate item in the annual budget for the Trust Territory. The High Commissioner should call the attention of the Secretary to any question which he may have regarding the budget for the judiciary.

PART V. General.

Prior orders. Department of the Interior Order No. 2876 of January 30, 1964, as amended, and Department of the Interior Order No. 2882 of September 28, 1964, as amended, are hereby superseded. Except for Order No. 2902 dated November 15, 1967, as amended, provisions of other prior orders of the Department of the Interior, insofar as they are inconsistent with the provisions of this order, are hereby superseded. Existing laws, regulations, orders, appointments, or other acts in effect immediately prior to the effective date of this order shall remain in effect until they are superseded pursuant to the provisions of this order.

/s/STEWART L. UDALL
Secretary of the Interior

December 27, 1968

ORDER NO. 2918, Amendment No. 1

WHEREAS, on December 27, 1968 the Secretary of the Interior promulgated Secretarial Order No. 2918 relating to the Government of the Trust Territory of the Pacific Islands; and

WHEREAS, the said Order No. 2918 in Section 4 of Part III limited the appropriation of funds by the Congress of Micronesia to those amounts available from revenues raised pursuant to the tax laws and other revenue laws in the Trust Territory; and

WHEREAS, Section 11 of Part III provided that regular sessions of the Congress of Micronesia were to be held in July of each year and January of alternate years; and

WHEREAS, Section 13 of Part III establishes the procedure for approval and disapproval of laws passed by the Congress of Micronesia; and

WHEREAS, Section 16 (e) of Part III relates to amendment and revision of legislation by reference; and

WHEREAS, Section 18 of Part III provides for the salary and expenses of members of the Congress of Micronesia; and

WHEREAS, certain revisions in Sections 1 and 3 of Part III are also desirable to clarify the organization of the Congress of Micronesia and the submission of legislation to the Congress of Micronesia by the High Commissioner prior to a legislative session.

NOW THEREFORE, Secretarial Order No. 2918 is amended in the following particulars, the amendments to be effective as of the date of this Amendment except as otherwise provided:

1. The second paragraph of Section 1 of Part III of the said Order No. 2918 is hereby amended to read as follows:

"When a Congress convenes, each House shall organize by the election of one of its number as presiding officer and such presiding officer shall be designated by the title of 'President of the Senate' or 'Speaker of the House of Representatives,' as the case may be. When the Congress meets in joint session, the Speaker of the House of Representatives shall preside."

2. Section 3 of Part III of the said Order No. 2918 is hereby amended to read as follows:

"Section 3. **Powers of the High Commissioner.** The High Commissioner may submit to the Congress prior to and during any legislative session legislation for its consideration."

3. Section 4 of Part III of the said Order No. 2918 is hereby amended to read as follows:

"Section 3. **Budget.** Money bills enacted by the Congress of Micronesia shall not provide for the appropriation of funds in excess of such amounts as are available or estimated to be available from revenues raised pursuant to the tax laws and other revenue laws of the Trust Territory: **Provided,** that the Secretary of the Interior shall, from time to time, define the term 'revenue' as used herein, so as generally to exclude therefrom all sums attributable to user charge or service related reimbursements to the Government of the Trust Territory."

"Prior to his final submission to the Secretary of the Interior of requests for Federal funds necessary for the support of governmental functions in the Trust Territory, the High Commissioner shall prepare a preliminary budget plan. He shall submit such plan to the Congress of Micronesia or the appropriate authorized committee or committees thereof for its review and recommendations with respect to such portions as relate to expenditures of funds proposed to be appropriated by the Congress of the United States. With respect to such portions of the preliminary budget plan, the High Commissioner shall adopt such recommendations of the Congress or the appropriate authorized committee or committees there-

of as he shall deem appropriate, but he shall transmit to the Secretary of the Interior all recommendations he has not adopted."

"For Fiscal Years 1971 and 1972, the Congress of Micronesia is authorized $125,000 from Federal grants appropriated to the Trust Territory of the Pacific Islands by the Congress of the United States, for operation and expenses of the Congress of Micronesia. For succeeding fiscal years, the Congress of Micronesia may request continuing or additional funds for its operations and expenses. Such requests shall be incorporated in the High Commissioner's preliminary budget plan for processing as set forth in this section."

4. The first paragraph of Section 11 of Part III of the said Order No. 2918 is hereby amended to read as follows, such amendment to become effective January 1, 1971:

"Section 11. **Sessions.** There shall be a regular session of the Congress held in each year beginning on the second Monday in January and continuing for not to exceed 50 consecutive calendar days."

5. Section 13 of Part III of the said Order No. 2918 is hereby amended to read as follows, such amendment to become effective January 1, 1971:

"Section 13. **Approval or Disapproval by the High Commissioner.** Every bill passed by the Congress shall be certified by the presiding officers and clerks of both Houses and shall thereupon be presented to the High Commissioner. If he approves, he shall sign the bill and it shall become law. If the High Commissioner disapproves, he shall so indicate and return it with his objections to the Congress within ten consecutive calendar days after it shall have been presented to him. If the High Commissioner takes no action and does not return the bill within such period, it shall be a law in like manner as if he had signed it, unless the Congress by adjournment prevents its return.

The High Commissioner shall have 30 days to consider bills presented to him less than ten days before adjournment or presented after adjournment. If he approves, he shall sign the bill and it shall become law. If the High Commissioner disapproves, he shall so indicate and return it with his objections to the Congress within thirty consecutive calendar days after it shall have been presented to him. If the High Commissioner takes no action and does not return the bill within such period, it shall be a law in like manner as if he had signed it.

When a bill is disapproved and returned by the High Commissioner to the Congress with his objections, each House may proceed to reconsider it. If such a bill is repassed by both Houses of the

Congress by a two-thirds majority of the entire membership of each House (one reading being required in each House for such passage), it shall be presented again to the High Commissioner. If he does not approve it within twenty days after presentation, he shall send it together with his comments thereon to the Secretary of the Interior. Within sixty days after its receipt by him, the Secretary of the Interior shall either approve or disapprove the bill. If he approves it, it shall become a law; otherwise it shall not.

If any bill presented to the High Commissioner shall contain several items of appropriation of money, he may object to one or more such items, or any part or parts thereof, while approving the other items or parts of the bill. In such case he shall append to the bill, at the time of signing, a statement of the item or items, part or parts thereof, so objected to, and the item or items, part of parts thereof so objected to shall have the effect of being vetoed."

6. Section 16 (e) of Part III of the said Order 2918 is hereby amended to read as follows, such amendment to become effective January 1, 1971:

"Section 16 (e). **Amendment and Revision by Reference prohibited.** No law or section of the law shall be amended or revised by reference to its title only, but in every instance such amendment or revision of the law or section thereof shall be published at full length and in its entirety as amended or revised and shall be reenacted."

7. Section 18 of Part III of the said Order No. 2918 is hereby amended to read as follows:

"Section 18. **Compensation and Expenses.** The members of the Congress of Micronesia shall receive compensation for their services and expenses as may be prescribed by law. Such compensation and expenses shall be from funds available to and appropriated by the Congress of Micronesia. The Congress may at no time increase the salaries of the incumbents during the current Congress. If the Congress of Micronesia should provide for an increase in the annual compensation paid to members for their services, such increase will apply to succeeding Congresses only. Per diem, if paid to the members of Congress, shall be in compliance with the standard Trust Territory rates. Compensation, expenses, per diem, etc., shall not be allowed in excess of such amounts as may be budgeted therefor."

8. Section 21 of Part III of the said Order No. 2918 is hereby amended to read as follows, said amendment to become effective January 1. 1971:

"Section 21. **Vacancies.**

(a). Whenever a vacancy in the membership of the House of Representatives occurs, the Speaker of the House of Representatives shall notify the High Commissioner and the High Commissioner shall then call a special election to fill such vacancy: Provided, that no special election shall be held if such vacancy occurs less than ninety days prior to the next succeeding general election.

(b). Whenever a vacancy in the membership of the Senate occurs, the President of the Senate shall notify the High Commissioner. If a vacancy occurs sixty days or more prior to the next succeeding general election, the High Commissioner shall make temporary appointment to fill such vacancy. The appointee shall be from the same administrative district as the person whom he succeeds and shall serve until the next succeeding general election at which time he shall be replaced by a regularly elected Senator who, unless the term of the person he succeeds shall have expired at the time of such election, shall serve only for the unexpired term of such person. In the event the election is for an unexpired term only, the High Commissioner shall issue a proclamation designating the election for the filling of such unexpired term."

9. Sections 19, 22, and 23 of Part III of the said Order No. 2918 are hereby repealed in their entirety.

/s/WALTER J. HICKEL
Secretary of the Interior

August 13, 1970

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-841

ROSE MARIE PORTER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners are stockholders of Micronesia Interocean Line, Inc. (MILI, now renamed Transpacific Lines, Inc.). They sued the United States in the Court of Claims for damages for an alleged breach of a contract between MILI and the Government of the Trust Territory of the Pacific Islands and for compensation for a claimed taking of their property without just compensation. The Court of Claims, in an opinion on which we rely (Pet. App. A, 1a-15a), found that it was without jurisdiction to grant the relief sought.

The facts giving rise to the claim are set forth in the opinion of the Court of Claims. Briefly, in 1968 the Office of the Trust Territory High Commissioner announced that it was seeking proposals for a 10-year sea transportation contract to connect the islands in the Trust Territory with one another and with the west coast of the United States. The solicitation for proposals

made it clear that the contract was to be with the Trust Territory Government, and directed that proposals be submitted to the High Commissioner of the Territory, with a copy to the Director of the Office of Territories, United States Department of the Interior. A review panel at the Department of Interior met with representatives of the bidders, and recommended a contract with Marine Chartering Company, Inc. (Marine) (Pet. App. A, 2a).

After negotiations, a contract was entered into and signed by the Government of the Trust Territory and Marine. In accordance with the contract terms Marine assigned the contract to Micronesia Interocean Line, Inc. (MILI), a corporation organized for this purpose under the laws of the Trust Territory, the capital stock of which was owned by Marine and citizens of the Trust Territory. MILI's ships were operated under the flag of the Trust Territory (Pet. App. A, 2a-3a).

In 1971 the Trust Territory, concerned with MILI's failure to maintain a required letter of credit and other alleged lapses in MILI's performance, notified MILI that it intended to terminate the agreement. After negotiations between Marine and the Attorney General of the Trust Territory, the Trust Territory withdrew its notice of default and Marine, MILI, and the Trust Territory Attorney General became parties to a Trust Agreement, which designated the Trust Territory Attorney General as trustee of Marine's stock in MILI (Pet. App. A, 3a).

Petitioners, some of the stockholders of MILI, thereafter brought a class action against the United States in the Court of Claims under the Tucker Act, 28 U.S.C. (Supp. II) 1491,[1] alleging breach of the contract by the Trust Territory and deprivation of their property

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[1]The text of the Act is reproduced at Pet. App. B, 1b.

without due process of law. Petitioners sought to invoke the jurisdiction of the Court of Claims by asserting that their claim arises from an express or implied contract with the United States (Pet. App. A, 4a).

The court granted the United States' motion for summary judgment on the ground that the claims stated were not against the United States, and hence, the court lacked jurisdiction to hear the claims.[2]

The decision of the Court of Claims is correct, is not in conflict with decisions of other courts, and presents no issue warranting further review.

1. Petitioners have stated no contract claim against the United States. The United States was not a signatory to either the initial contract between the Government of the Trust Territories and Marine or the subsequent trust agreement. The acts alleged by petitioners to have constituted a breach of the agreement (and to have deprived them of property without due process of law) were all alleged acts of the High Commissioner and Attorney General of the Trust Territory, not acts of the United States as such (Pet. 5-6; Pet. App. A, 3a-4a). And, as we show below, the Government of the Trust Territory is not an instrumentality of the United States so as to make the United States a party to the contract at issue here.

By agreement ratified by the Security Council of the United Nations on April 2, 1947, and approved by a joint resolution of Congress on July 18, 1947, the United States was designated "Administering Authority" over the Pacific Islands Trust Territory. 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189. In accepting trusteeship, the

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[2]Contrary to petitioners' claim (Pet. 9), the Court of Claims did not base its decision on the fact that the actions complained of occurred outside the United States, but rather that they were not taken by the United States (Pet. App. A, 12a).

United States made it clear that it did not accept sovereignty over the islands. 16 Dept. of State Bull. 416, 417 (1947). This disavowal of sovereignty is in accordance with the accepted view of trust territories under international law: "[w]herever sovereignty does rest [with respect to the trust territories] it is not with the administering power." Sayre, *Legal Problems Arising from the United Nations Trusteeship System*, 42 Am. J. Int'l Law 263, 271 (1948).

In 1962, the authority for civil administration of the Territory was delegated to the Secretary of the Interior, who, in 1964, established a Trust Territory government having legislative, judicial, and executive branches, with a High Commissioner as chief executive officer for the territory. See Secretarial Order No. 2918, December 27, 1968, 34 Fed. Reg. 157. This domestic government governs the Trust Territory.[3]

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[3]The United States, however, has retained control over foreign affairs and has reserved the authority to contract "*on behalf of the Trust Territory*" (emphasis added) for various kinds of transportation services. Secretarial Order No. 2902, November 15, 1967, 32 Fed. Reg. 16058. While officials of the Department of the Interior thus participated in obtaining the contract with Marine, it was clear that they acted as agents for the Trust Territory. The solicitation for proposals and contract, moreover, specifically provided that the agreement was to be with the Trust Territory government (*supra*, pp. 1-2; see also Def. Exh. 2, pp. 1-2).

It is thus also clear that not only was there no expressed contract but there was no contract implied in fact between MILI and the United States. As the officials who negotiated and signed the agreement were acting as agents of the Trust

That the Trust Territory is not an agency or instrumentality of the United States is also shown by its treatment by the courts. It has been deemed a "foreign country" under the Federal Tort Claims Act, 28 U.S.C. 2680(k) (see *Callas* v. *United States*, 253 F.2d 838 (C.A. 2), and *Brunell* v. *United States*, 77 F. Supp. 68 (S.D. N.Y.)) and a "foreign state" under the Immigration and Nationality Act, 8 U.S.C. 1101(a)(14) (*Application of Reyes*, 140 F. Supp. 130 (D. Ha.); *Aradanas* v. *Hogan*, 155 F. Supp. 546 (D. Ha.)).

Contrary to petitioners' contention (Pet. 8-9) the decision of the Court of Claims is also supported by, not in conflict with, the decision of the Court of Appeals for the Ninth Circuit in *People of Saipan* v. *United States Department of Interior*, 502 F. 2d 90 (petition for a writ of certiorari pending, No. 74-622). In *People of Saipan* the court of appeals held that the action of the High Commissioner of the Trust Territory in approving a lease for a hotel "was not 'federal' action covered by the National Environmental Policy Act" (502 F. 2d at 94-95) and that the Administrative Procedure Act does not apply to the territorial government. The court further held that the plaintiffs might have a cause of action against the High Commissioner based on the Trust Agreement

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Territory, and not of the United States, there could be no meeting of the minds necessary to bind the United States to the agreement.

Nor does the fact that the salaries of Trust Territory officials are paid by funds of the United States appropriated for the administration of the Trust Territory make them agents of the United States. Rather, the officials act on behalf of the Trust Territory under a plan implemented in furtherance of responsibilities the United States assumed under its agreement with the United Nations regarding the Trust Territory. They are agents of the Trust Territory. See *Harris* v. *Boreham*, 233 F.2d 110 (C.A. 3), which held, that the Superintendent of Public Works for the municipalities of St. John and St. Thomas in the Virgin Islands, though paid by Congress, was not an employee of the United States for purposes of the Tort Claims Act.

between the United Nations and the United States, but emphasized that that action should first be pursued in the courts of the Trust Territory (*id.* at 95-96):

> This clear statement of intent on the part of the United Nations to foster self-government in the Trust Territory constrains us not to hold that the actions of the local government are reviewable in the same manner as the actions of domestic federal administrative agencies, in a federal district court several thousand miles from the islands.[4]

2. The Court of Claims also correctly similarly found that there was no taking of petitioners' property by the United States (Pet. App. A, 11a-13a). The complaint with regard to the taking alleges wrongdoing on the part of certain officials of the Trust Territory (Pet. App. A, 11a). As we demonstrated above, the Trust Territory officials act on behalf of the Trust Territory and not the United States. The Court of Claims thus correctly determined that it lacked jurisdiction over the claimed taking as well as the claimed breach of contract.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1975.

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[4]For a more complete discussion of *People of Saipan* we refer the Court to our brief in opposition and supplemental brief in that case, copies of which we are furnishing petitioners in this case.

[5]Petitioners do not substantiate their claim that they have no adequate remedy in the courts of the Trust Territory (see Pet. 11). In any event, the availability of review in the Trust Territory courts does not affect the jurisdiction of the Court of Claims.